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Supreme Court of the United States.

OCTOBER TERM, 1936.

No. 13, Original.

STATE OF TEXAS, *Complainant*,

v.

STATE OF FLORIDA *et al.*, *Respondents*.

ANSWER OF THE COMMONWEALTH OF MASSACHUSETTS.

PAUL A. DEVER,
Attorney General for the
Commonwealth of Massachusetts.
JAMES J. RONAN,
Assistant Attorney General.

ADDISON C. GETCHELL & SON, LAW PRINTERS, BOSTON.

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STATE OF TEXAS, *Complainant*,

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STATE OF FLORIDA *et al.*, *Respondents*.

ANSWER OF THE COMMONWEALTH OF MASSACHUSETTS.

And now comes the respondent Commonwealth of Massachusetts and answers the bill of complaint heretofore filed in the above proceeding as follows:

1. This respondent admits all the allegations contained in the first paragraph of the bill, except those pertaining to the residence and the inhabitancy of the two individual respondents, and says that as to them it is ignorant and can neither admit nor deny the same, and calls upon the complainant to prove the same, if material.

2. This respondent denies the allegations contained in the second paragraph of the bill, that the case purported to be set forth in said bill is of a civil nature between

two or more sister States and between a State and citizens of another State, and that it is within the original jurisdiction of this Court.

3. This respondent admits that there was at the times alleged in the third paragraph of the bill a transfer, succession or inheritance tax in the State of Texas which was assessable upon the real and tangible personal property situated in said State in the case of a non-resident decedent and upon the real, tangible and intangible personal property in the case of a resident decedent, but whether the authority to impose such a tax is governed by the statutes therein enumerated, or whether the tax is computed in the manner therein alleged, or constitutes a lien upon the decedent's property, as alleged in said paragraph, are all matters concerning which this respondent is without knowledge and so can neither admit nor deny the same, but calls upon the complainant to prove the same, if material.

4. This respondent admits the allegations contained in the fourth paragraph of the bill.

5. This respondent admits that there was in the State of Florida at the time alleged in the fifth paragraph of the bill a transfer, succession or inheritance tax assessed upon the real and personal property of resident decedents and on the real and tangible personal property of non-resident decedents which was located within that State, but whether the authority to impose such a tax is governed by the statutes therein enumerated, or whether the tax is computed in the manner alleged therein, or con-

stitutes a lien upon the decedent's property, as therein alleged, are all matters concerning which this respondent is without knowledge and so can neither admit nor deny the same, but calls upon the complainant to prove the same, if material.

6. This respondent admits the allegations contained in the sixth paragraph of the bill.

7. This respondent admits that there was upon the date alleged in the seventh paragraph of the bill a transfer, succession or inheritance tax in the State of New York, and that such a tax is assessed on a resident decedent's real estate and tangible personal property located in that State and his intangible personal property, and that in the case of a non-resident such tax is assessable upon the real estate and tangible personal property located within said State, but whether the authority to impose such a tax is governed by the statutes therein enumerated, or whether the tax is computed in the manner alleged therein, or constitutes a lien upon the decedent's property, as therein alleged, are all matters concerning which the respondent is without knowledge, and so can neither admit nor deny the same, but calls upon the complainant to prove the same, if material.

8. This respondent admits the allegations contained in the eighth paragraph of the bill.

9. This respondent denies the allegations contained in the ninth paragraph of the bill, that the estate tax of the United States is not affected by the determination of the

State of domicile, or that the amount of the said United States estate tax is not thereby affected.

10. This respondent admits that the decedent, Edward H. R. Green, died on or about the date mentioned in the tenth paragraph of the bill while he was temporarily sojourning in Essex County in the State of New York. It denies that at the time of his death the said Green was domiciled in the State of Texas, and says that at that time and for years prior thereto the said decedent was domiciled in the Commonwealth of Massachusetts. This respondent admits that at the time of his death the decedent was possessed of property of great value, but is ignorant as to whether the said property is fully and correctly set forth, as alleged in said paragraph.

11. This respondent is ignorant as to each and every allegation contained in the eleventh paragraph of the bill as to the kind, location, value or amount of property alleged to have been owned by the decedent at the time of his death or the amount of his then indebtedness, and so is unable to admit or deny the said allegations, but leaves them to the complainant to prove, if material. This respondent admits that at the time of his death the decedent was the owner of real estate situated in the Commonwealth of Massachusetts and of the approximate value of four hundred and sixty-five thousand dollars, and of tangible personal property located within the said Commonwealth of the approximate value of three million dollars, and of intangible personal property located in

said Commonwealth of the approximate amount of thirty thousand dollars.

12. As to the allegations contained in the twelfth paragraph of the bill, this respondent admits that there has not been filed any Federal tax return; and further admits that the estate is subject to the United States estate tax, but is ignorant as to the amount of the tax that might be imposed, and calls upon the complainant to prove the same, if material.

13. As to the allegations contained in the thirteenth paragraph of the bill, this respondent is ignorant as to whether or not any of the property of the decedent is subject to the succession, transfer or inheritance tax laws of the State of Texas. It denies that the State of Texas is entitled to a tax in the amount set forth in said paragraph; and further denies that the State of Texas is entitled to impose any such tax upon any of the intangible property of the decedent as shown by the calculation referred to in the said paragraph or to impose any tax whatsoever upon any of the intangible property of the decedent.

14. As to the allegations contained in the fourteenth paragraph of the bill, this respondent is ignorant as to whether or not any of the property of the decedent is subject to the succession, transfer or inheritance tax laws of the State of Florida. It denies that the State of Florida is entitled to a tax in the amount set forth in said paragraph; and further denies that the State of Florida is

entitled to impose any such taxes upon any of the intangible property of the decedent as shown in the calculation referred to in the said paragraph, or to impose any tax whatsoever upon any of the intangible property of the decedent.

15. The respondent admits that it is entitled to impose and collect a transfer, succession and inheritance tax in the substantial manner set forth in the fifteenth paragraph of the bill, but it is unable at present to state the amount of the said tax because it does not know the value of the said estate or who or in what proportions the persons entitled thereto will take, and, consequently, cannot admit nor deny that the amount of the tax mentioned in said paragraph is correct, but calls upon the complainant to prove the same, if material.

16. As to the allegations contained in the sixteenth paragraph of the bill, this respondent is ignorant as to whether or not any of the property of the decedent is subject to the succession, transfer or inheritance tax laws of the State of New York. It denies that the State of New York is entitled to the tax in the amount set forth in said paragraph; and further denies that the State of New York is entitled to impose any such tax upon any of the intangible property of the decedent as shown in the calculation referred to in said paragraph or to impose any tax whatsoever upon any of the intangible property of the decedent.

17. The respondent denies the allegations contained in the seventeenth paragraph that the United States and the other States therein named will attempt to collect a tax of the total amount therein enumerated. It denies that the total net estate is approximately the figure mentioned in the said paragraph; and further denies that the amount of the estate will be insufficient by the amount therein named or by any other amount to pay any taxes to the State of Texas if the said State is entitled to levy and collect any taxes. This respondent says that it is ignorant as to the correctness of the figures and the summaries referred to in said paragraph, and so can neither admit nor deny their correctness, and calls upon the complainant to prove the same, if material.

18. This respondent admits that one of the issues set forth in the bill is what State of those named in the eighteenth paragraph was the domiciliary State of the decedent at the time of his death; and further admits that the adjudication of the question of domicile will determine the State that is entitled to impose an inheritance tax upon the intangible property of the decedent.

19. The respondent admits that the respondent Hetty Sylvia Ann Howland Green Wilks is the sister and the respondent Mabel Harlow Green is the widow of the decedent, as alleged in the nineteenth paragraph of the bill. As to the claims made by each of these two individual respondents, as averred in said paragraph, this respondent says it is without knowledge and so can neither admit nor

deny the same, and calls upon the complainant to prove the same, if material.

20. This respondent admits the allegations contained in the twentieth paragraph of the bill.

21. As to the allegations contained in the twenty-first paragraph of the bill, this respondent admits that the decedent was born abroad, but denies he was domiciled in Vermont; it denies he made his home in Texas, and further denies that he ever had or continued to have his domicile in Texas up to the time of his death. The respondent admits that, since 1910 and up to the time of his death, the decedent was, during most if not all of the time, outside of the State of Texas, but denies that his alleged absence from said Texas was due to the matters and things alleged in said paragraph, and denies that the decedent did not declare and manifest any intention or purpose of abandoning his residence and domicile in Texas, if he ever had any, which this respondent denies. This respondent denies that he ever intended to have or to retain his residence or domicile in Texas or that he ever declared or manifested any such intention or that he avoided any conduct or actions which might constitute him a resident or inhabitant of some other State; and further says that he did by his conduct and actions have and continue to have a domicile in the Commonwealth of Massachusetts, which he had and retained up to the time of his death.

22. This respondent denies the allegation contained in the twenty-second paragraph of the bill to the effect that the decedent was domiciled at his death in the State of Texas, and denies that he was domiciled in any of the other States therein mentioned excepting only the Commonwealth of Massachusetts, which this respondent admits was the domiciliary State at the time of the death of the decedent.

23. This respondent admits that each of the States named in the twenty-third paragraph of the bill claims in good faith that the decedent at the time of his death was domiciled in their said respective States, and that they claim that the payment of a death tax is a condition precedent to succession to the tangible personal property of the decedent located within any of the respective States and to the intangible property wherever located. The respondent is ignorant as to whether a lien to secure the payment of a death tax exists in any or all of the States mentioned in the said paragraph, excepting that it admits that such a lien does in fact exist upon property subject to the payment of a death tax to the Commonwealth of Massachusetts.

24. Whether the value of the property located in the State of Texas is insufficient to pay the tax, if any, that might be found due said State as alleged in the twenty-fourth paragraph of the bill, is a matter not within the knowledge of this respondent, who is, therefore, unable to

admit or deny the said allegation, but calls upon the complainant to prove the same, if material.

25. This respondent is ignorant as to the truth of the allegations contained in the twenty-fifth paragraph that there is not sufficient property to satisfy the tax claims asserted by the States mentioned in said paragraph and of the United States, and that there will not be enough property to pay the State of Texas under the circumstances set forth in the said paragraph, and as to all such matters and things this respondent says it has no actual knowledge and so can neither admit nor deny the same, and calls upon the complainant to prove the same, if material.

26. As to the allegations contained in the twenty-sixth paragraph of the bill, this respondent is without knowledge as to the matters contained in clauses (a), (b), (c), (d) and (e), and so can neither admit nor deny the same, except that it admits that, as alleged in clause (c), the Commonwealth of Massachusetts entered an appearance in the proceeding therein mentioned, but that said appearance has been stricken out, as alleged in said clause. This respondent admits the allegations contained in clause (f).

27. This respondent admits the allegations contained in the twenty-seventh paragraph in so far as they pertain to this respondent, and as to the remaining allegations referring to the other States, this respondent says it has no knowledge as to the truth of such allegations and so can

neither admit nor deny the same, and calls upon the complainant to prove the same, if material.

28. This respondent says that the allegation contained in the twenty-eighth paragraph of the bill is a mere conclusion of law not calling for an answer from it, but that, if any of the said allegations may be determined to be allegations of fact, then it denies such allegations.

29. This respondent says that the allegations contained in the twenty-ninth paragraph of the bill are mere conclusions of law not calling for an answer from it, as to which it submits itself to the judgment of this Honorable Court, but that if any such allegations should be determined to be allegations of fact, then this respondent denies all such allegations.

30. This respondent admits, in so far as the allegations contained in the thirtieth paragraph refer to it, that no adjudication has been made in the Commonwealth of Massachusetts as to the domicile of the decedent, and neither has any adjudication been made in said Commonwealth as to the liability to a death tax, nor has the amount of any such tax been determined in said Commonwealth. This respondent admits that the question of domicile must be decided before the question of tax liability may be settled, but denies that such question of domicile for the aforesaid purpose cannot be decided in a court which does not have jurisdiction of all the parties to the said cause. This respondent is ignorant as to the truth of the remaining allegations in the said paragraph con-

tained, and so can neither admit nor deny the same, and calls upon the complainant to prove the same, if material.

31. This respondent admits that each of the States enumerated in the thirty-first paragraph is claiming to be the domiciliary State of the decedent; and further admits that each of the said States is attempting to collect a death tax upon the intangible personal property of the decedent and upon the realty and tangible personal property of the decedent located within the limits of such respective claiming State, but whether the said States other than this respondent are asserting a lien for the amount set forth in the said paragraph, this respondent is ignorant, and neither admits nor denies the same, and calls upon the complainant to prove the same, if material. This respondent admits that it is claiming and asserting its right as the domiciliary State of the decedent to enforce a lien for taxes as set forth in said paragraph; and further admits that the proceedings referred to in said paragraph have been held in the said Commonwealth of Massachusetts, and that in accordance therewith the conservator, who was appointed thereunder, has taken possession of the tangible personal property and of the real estate of the decedent, as set forth in said paragraph, and that the said Commonwealth of Massachusetts is asserting a lien for such death taxes. As to the remaining allegations contained in said paragraph referring to the State of Florida and to the State of New York in the procedure therein alleged for the purpose of collecting

a death tax as the domiciliary State of the decedent, this respondent says that it is ignorant and can neither admit nor deny the same, and calls upon the complainant to prove the same, if material.

32. This respondent denies that any rights of the complainant as alleged in the thirty-second paragraph are in jeopardy, injured or damaged, all as alleged in the said paragraph, and denies that it is entitled to any relief as referred to in the aforesaid paragraph.

33. As to the allegations contained in the thirty-third paragraph, this respondent denies that the complainant will be unable to enforce any lien, if any it has, for a death tax upon the estate of the said decedent in the amount mentioned or in any other amount, or that the State will be deprived of its right to a lien in the amount mentioned, or for any other amount, or will be denied relief unless this Honorable Court takes jurisdiction and determines the question of domicile; all as alleged in said paragraph.

34. This respondent is ignorant as to the truth of the allegations contained in the thirty-fourth paragraph, and so can neither admit nor deny the same, but calls upon the complainant to prove the same, if material.

35. This respondent denies the allegation contained in the thirty-fifth paragraph.

36. This respondent denies the allegation contained in the thirty-sixth paragraph that the complainant is without an adequate remedy save in the manner set forth in said paragraph. The remaining allegations of said para-

graph are concerning matters and things not calling for an answer from this respondent.

37. This respondent says that the thirty-seventh paragraph of the bill is composed of a prayer for relief by the complainant and does not require an answer from this respondent.

38. This respondent says that the allegations contained in the thirty-eighth paragraph constitute a mere prayer for general relief not calling for an answer from this respondent.

39. And further answering, this respondent says that the decedent, Edward H. R. Green, at the time of his death in June, 1936, and for many years prior thereto, was domiciled in the Commonwealth of Massachusetts, and that the said Commonwealth, as the domiciliary State of the said decedent, is entitled to impose and collect a transfer, succession and inheritance tax upon the real estate and tangible personal property owned by the decedent at the time of his death and located within the said Commonwealth of Massachusetts and also a right to collect the aforesaid tax upon all the intangible personal property, then owned by the decedent, wherever the same may be located.

WHEREFORE this respondent prays that this Honorable Court may determine, declare and adjudge that the said Edward H. R. Green, for the purposes of transfer, legacy and succession or inheritance and estate taxes, was domi-

ciled at the time of his death within the Commonwealth of Massachusetts and not within the State of Texas, the State of Florida or the State of New York, and further may determine, declare and adjudge that the Commonwealth of Massachusetts, and it alone, has exclusive right and jurisdiction to impose and collect such taxes upon the intangible personal property owned by the said decedent at the time of his death. And the respondent further prays for all other, further, different and additional relief as this Honorable Court may deem expedient, and offers to do all such equity as this Honorable Court shall require.

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